IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8116 OF 2005

1. Bhavika Vidya Prasarak Mandal & Anr.] .. Petitioner

Versus

1. The State of Maharashtra & Anr.] .. Respondents

Mr. C.K. Thomas i/b M/s. C.K. Thomas & Associates for the petitioners.

Mr. V.P. Malwankar, AGP, for the respondent No.1.

Mr. B.V. Phadnis for respondent No.2.

CORAM: R.M. LODHA &
NARESH H. PATIL, JJ.

DATED: 14TH AUGUST, 2006

P.C. :

. The first petitioner - Bhavika Vidya Prasarak Mandal is a Society registered under the Societies Registration Act, 1860 and also a Trust registered under the Bombay Public Trust Act, 1950. The second petitioner is the Secretary of the first petitioner. On 30th October, 2004 the first petitioner made an application to the State Government for starting a new College for Arts, Commerce and Science at Kalwa, District Thane. According to the petitioners, the University of Mumbai has recommended to the State

Government that the first petitioner may be permitted to start Degree College in Arts, Commerce and Science for the academic year 2005-2006. However, the State Government did not pass any final order on the petitioners' application dated 30th October, 2004 for starting the Degree College in Arts, Commerce and Science in Kalwa, Thane necessitating the petitioners to approach this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India.

2. It is seen from the facts that have come on record that the application for starting the Degree College for Arts, Commerce and Science at Kalwa was made by the petitioner No.1 for the academic year 2005-2006. It also appears that the University of Mumbai recommended the petitioners' application to the State Government for the courses in Arts, Commerce and Science for the academic year 2005-2006. Sub-Section 5 of Section 82, however, makes it very clear that out of the applications recommended by the University, the State Government may grant permission to such institution as may deem right and proper in its absolute discretion, taking into account the State Government's budgetary resources, the suitability of the Management seeking permission to open new institution and State level priorities with regard to the location of the

institution in higher learning. Merely because the University has recommended the petitioners' application for starting the courses in Arts, Commerce and Science for the academic year 2005-2006, the petitioners do not get any right to favourable consideration by the State Government. While granting permission, the State Government has to look into diverse aspects including its budgetary resources, the suitability of the Management seeking permission to open new institutions and the State level priorities with regard to location of the institution. As a matter of fact from the communication dated 8th August, 2005 sent to the Registrars of all non-agricultural Universities, no doubt is left that the Government took decision not to give permission to new Colleges during the academic year 2005-2006. The English translation of the document dated 8th August, 2005 that has been provided by the Advocate for the petitioner reads thus:

> "During this year, out of the proposals received from various universities, the permission is given to the recommended colleges by the universities as per the need of new study courses/classes/subject to start it, therefore during the academic year 2005-2006, the admission capacity is available in sufficient ratio, hence the government has taken decision that not to give permission to new colleges during the academic year 2005-2006. As per the need the application received during academic year 2005-06 will be considered for next year.

> . Due to the decision taken by the government as above, therefore during the academic year 2005-2006, do not accept application to start new colleges in Arts, Commerce, Science & Law colleges. Such applications, if accepted then its whole responsibility of the University only, which please note. But the proposal received during the year 2005-06, out of the proposal, those societies have demanded fee, then their fee should be refunded."

3. The communication dated 8th August, 2005 incorporates the decision of the State Government not to give permission to new colleges during the academic year 2005-06 and as per the need the said applications received during the academic year 2005-06 may be considered for the next year. The universities were also directed not to accept any application for starting new colleges in Arts, Commerce and Science and if accepted, such university would be responsible. The decision of the State Government also provides for refund of fee to the applicants who demand the same.

4. The counsel for petitioners sought to urge that though petitioners' application was not considered in the light of the communication dated 8th August, 2005, the State Government selectively granted permission to some societies to start Degree Colleges as special case. We are afraid, the facts in this regard have not been sufficiently placed by the petitioners on

record. Suffice, however, that as per the decision taken by the State Government, no new colleges were to be opened in Arts, Science and Commerce during the academic year 2005-2006. As a matter of fact, the period for consideration of such application for the academic year 2006-2007 is also over. In the circumstances, we are satisfied that petitioners are not entitled to any relief and the Writ Petition is devoid of any substance. Consequently, the Writ Petition is dismissed. However, we direct the respondent No.2 to refund the amount of Rs.25,000/- to the petitioners. The refund shall be made by respondent No.2 within two months from today.

Sd/-
[R.M. LODHA, J.]

Sd/-
[NARESH H. PATIL, J.]